IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

KHANGA RAM & ANOTHER. V. THE STATE OF RAJASTHAN

D. B. CRIMINAL APPEAL NO. 467/2002

Under Section 374 (2), Cr.P.C.,against the Judgment dated 07-02-2002 , passed by the learned Additional Sessions Judge, (Fast Track),Sirohi, in Sessions Case No.71/2001 (94/2000)

DATE OF JUDGMENT :::: 07-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. Amitabh Acharya, for Appellant (s).
Mr. J.P.S.Choudhary, Public Prosecutor.
Mr. B.S.Rathore, for Complainant.

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Aggrieved by the judgment of the Additional District Judge (Fast Track), Sirohi dated 07-02-2002 in Sessions Case No.71/2002 (94/2000), this appeal is being preferred by accused

Khangara Ram and Dharma Ram.

Bheru Singh lodged F. I. R. in Police Station, Sheoganj, at about 8.15 a.m., dated 30.08.2000, stating that at about 7.00 a.m. When his younger brother Moti Singh was returning from Sheoganj on his Luna, then accused Dharma Ram stopped him. On shouting of accused Dharma Ram, accused Khangara Ram came with an axe and inflicted 3 to 4 injuries on the neck and head of deceased Moti Singh. Both the accused, thereafter, pulled the body of deceased Moti Singh in their house and closed the door. Complainant informed that on return from temple Ramdevji, when he reached to the street, then he saw the incident. He could not shout due to fear, however, his grand son Chhail Singh reached on the scene of occurrence, immediately thereafter. Chhail Singh tried to save deceased Moti Singh, but the accused closed the door of his house. At the time of incident, Smt.Shobha w/o. Bhoor Singh was filling water from the Hand Pump.

Complainant Bheru Singh further stated that on 29.08.2000, Khangara Ram had threatened Moti Singh, due to land dispute. Khangara Ram, Parbat Singh, Ram Singh and Magaram had even tried to kill deceased Moti Singh at his well, a day before the occurrence, but remain safe for the reason that deceased Moti Singh had gone to Sheoganj to attend his duties. However, when he returned from duties at 7.00 a.m., aforesaid

incident took place.

First Information Report was, thereafter, registered under Section 302, Section 34/302 and Section 341, IPC, bearing FIR No.123 dated 30-08-2000. Police conducted usual investigation and submitted challan in the Court of Civil Judge (Junior Division) and Judicial Magistrate, First Class, Sheoganj, from where the matter was committed to the Sessions Court, Sirohi, but thereafter, the case was transferred to the trial Court.

The trial Court framed charges against accused. Accused Khangara Ram, was charged under Section 302 of IPC and accused Dharma Ram was charged under Section 302 read with Section 34 of IPC. Two more accused Ram Singh and Parbat Singh were charged under Section 302 read with Section 109 of IPC. Charges were denied by the accused and they claimed trial.

Prosecution examined 14 witnesses and produced 46 documents. Statements of the accused were recorded under Section 313 of Cr.P.C. One defense witness was produced and 13 documents exhibited in defense.

Trial Court convicted accused Khangara Ram under Section 302, IPC and sentenced for life imprisonment and penalty of Rs.1,000/-, in default to serve one month's rigorous imprisonment. Accused Dharma Ram was convicted under Section 302 read with Section 34 of IPC and sentenced for life imprisonment and penalty of Rs.1,000/-, in default to undergo

one month's rigorous imprisonment.

Learned counsel for the appellants submitted that both the accused were falsely implicated in the case as land dispute between accused and the deceased. It was urged that no allegation exists against accused Dharma Ram, causing injuries to deceased. Hence, said accused was wrongly being convicted and sentenced.

Per contra, learned Public Prosecutor submitted that both the accused were rightly convicted and sentenced for life imprisonment. Apart from two accused, which preferred appeal, two more accused were acquitted after giving benefit of doubt. Thus, it was urged that the trial Court has carefully considered the matter based on material which calls for no interference from this Court.

We have considered rival submissions of the learned counsel for the parties and gone through the material available on record. There exists three eye witnesses, whose statements were deposed.

PW 1 Bheru Singh stated that he was present at the scene of occurrence as he was returning from temple at 7.00 a.m. His brother Moti Singh also returned from his night duties from Sheoganj and, at that time, accused Dharma Ram stopped deceased, having “Halvani” in his hand. On a shout, accused Khangara Ram came with an axe and gave 3-4 blows to the

deceased on his neck and head.

PW 3 Chhail Singh also stated that when he was going towards village from his residence, at about 7.00 a.m. He had seen accused Dharma Ram, having "Halvani" in his hand. On a shout, Khangara Ram inflicted deceased Moti Singh from an axe. He tried to save deceased but accused closed the door.

PW 7 Smt.Shobha stated that she had come out from her residence at around 7.00 a.m. , to bring water from Hand Pump and, at that time, deceased Moti Singh came. She asked Moti Singh to accept tea, but he refused and proceeded ahead. Close to the house of accused, accused - Dharma Ram stopped deceased Moti Singh, who was then inflicted blows by an axe by accused Khangara Ram.

PW 6 Dr. Arvind Jain stated that deceased has sustained six injuries, which were caused by sharp weapon and it is posible that such injuries can be caused by an axe. The said witness further stated that the injuries sustained by the deceased were sufficient to cause death.

The statements of two accused were recorded under Section 313, Cr.P.C., stated that there was a land dispute between them and accused. The learned trial Court considered the statements of eye witnesses as well as other witnesses and material available on record, thereafter found Dharma Ram and Khangara Ram involved in the incident causing murder of

deceased Moti Singh.

On careful examination of matter, it becomes clear that three persons were available on the scene of occurrence, out of which PW 7 Shobha is an independent witness. The said witness along with two other eye witnesses clearly stated that all the injuries were inflicted by accused Khangara Ram. There exists no allegation against accused Dharma Ram for causing any injury to the deceased Moti Singh. The allegation against Dharma Ram is that he stopped deceased Moti Singh when he returned back from Sheoganj. Deceased was given 3-4 blows by accused Khangara Ram and, thereafter, deceased was pulled in the house of the accused. Material available on record shows trail of blood going in side the house of accused. Blood stained axe was recovered at the instance of accused and as per the statement of Dr.Arvind Jain, injuries were sufficient to cause death. It is admitted by the accused that a land dispute was going on between them and accused. The trial Court, after considering all these aspects, convicted accused Khangara Ram under Section 302, IPC, whereas Dharma Ram was convicted under Section 302 read with Section 34, IPC.

So far as the conviction of accused Khangara Ram is concerned, it calls for no interference as case against said accused proved beyond reasonable doubt by the prosecution.

So far as the case of accused Dharma Ram is concerned,

allegation against him is that he stopped deceased Moti Singh, but there exists no allegation of causing injuries to the deceased. As per the statement of Dr.Arvind Jain, deceased died due to head and neck injuries which were then inflicted by accused Khangara Ram. Even eye witness has not stated that Dharma Ram caused injury to deceased, the only allegation against him is that he stopped deceased and shouted, but for that reason, he cannot be convicted under Section 302 read with Section 34 of IPC.

Accused Dharma Ram is accordingly acquitted and the order of conviction and sentence passed against him by the trial Court is set aside. Accused Dharma Ram was released on bail by this Court vide its order dated 20.08.2002. His personal bonds and sureties are cancelled.

Accordingly, so far as the appeal of accused Khangara Ram is concerned, the same is dismissed. Said accused should serve the sentence and thereby the judgment of the learned trial Court is affirmed qua accused Khangara Ram. However, appeal of Dharma Ram is accepted and thereby order of conviction and sentence passed against him are set aside.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

scd.